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LIABILITY OF RAILROAD COMPANIES FOR MEDICAL SERVICES RENDERED TO INJURED EMPLOYEES AND OTHERS

ALTHOUGH it has been held that, by virtue of the relation between them, the employer is bound to furnish medical aid to his sick or injured employee,¹ yet, at the present time, according to the general consensus of opinion, this is not the law. There is no implication or incident growing out of the fact of employment that imposes upon the employer any liability for the physician's bills of the employee. The citation of authority upon a proposition that is now so generally recognized, is not necessary. It should be noted, however, that an apparent exception exists in the case of seamen; for, in regard to them, the rule is very generally recognized and enforced that, irrespective of any contract to that effect, they are, when sick or injured, entitled to treatment at the expense of the vessel.² But while no obligation to pay for medical services rendered to the employee is imposed upon the employer, either by virtue of the relation of the parties or the nature of the contract, the latter may be made liable for such services through his agreement to pay for them; and this agreement may be made by the employer or his authorized agent. The services rendered to the employee would be a sufficient consideration for such an agreement.³ Modern changes have developed many lines of employment that are so hazardous to the employed that the dictates of humanity and the interests of the employers prompt them to make provision for medical and surgical aid to those injured in the service. Railroad companies, for example, usually maintain a medical staff whose members may be summoned in cases of emergency. Mining companies have their surgeons and their hospitals, in order that sick or injured

¹ *Scarman v. Castell*, 1 Esp. 270. But see *Newby v. Wiltshire*, 2 Esp. 739, and *Wennall v. Adney*, 3 Bos. & P. 247.

² See *Scarff v. Metcalf*, 107 N. Y. 211.

³ *Toledo, Wabash & Western Railway Company v. Rodrigues*, 47 Ill. 188, 190.

employees may receive prompt and effective treatment. And not infrequently, at the present time, manufacturing companies have their surgeons who are paid by the company for services to injured employees. As a rule, probably, such services are a gratuity from the company, particularly when rendered in an emergency arising from accident, but sometimes it is a part of the contract of service that they are to be furnished. Notwithstanding these provisions for the treatment of the injured, it often happens that cases of emergency arise when it is impossible for the official medical representatives of a company to be present and when it is necessary in order to save life or alleviate suffering that such medical aid as can be secured, should be summoned at once. In the case of railway accidents especially, the calling of physicians who are not in the regular employment of the company, often becomes an imperative necessity. The question of the liability of railroad companies for such services has been frequently before the courts, and it will be the principal topic for discussion in this article, although incidentally the liability of mining and manufacturing companies, under like circumstances, will be considered.

In one or two states a duty seems to have been imposed upon railroad companies, either by statute or by the holding of the courts, in regard to furnishing medical aid to employees and others injured in an accident. In South Carolina, for example, it is provided by statute that "every railroad corporation shall cause immediate notice of any accident which may occur on its road attended with injury to any person to be given to a physician most accessible to the place of accident," and a specific penalty for a failure to comply with the provision is prescribed.¹ In Indiana the appellate court has declared that it is not only within the power of a railroad company "to provide medical attendance, but it is also its duty to do so in cases of emergency, where it is imperatively demanded."² And that the supreme court of Indiana is in sympathy with the doctrine is apparent from the reasoning of the court in *Terre Haute and Indianapolis Railroad Company v. McMurray*.³ In the course of the opinion the court says:—

"Suppose the axle of a car to break because of a defect, and a brakeman's leg to be mangled by the derailment consequent upon the breaking of the axle, and that he is in imminent danger of bleeding to death unless surgical

¹ See *Adkins v. Atlanta & Charlotte Air-line Railway Company*, 27 S. C. 71, 76.

² *Toledo, St. Louis & Kansas City Railroad Co. v. Mylott*, 6 Ind. App. 438

³ 98 Ind. 358.

aid is summoned at once, and suppose the accident to occur at a point where there is no station and when no officer superior to the conductor is present, would not the conductor have authority to call a surgeon? Is there not a duty to the mangled man that some one must discharge; and if there be such a duty, who owes it, the employer or a stranger? Humanity and justice unite in affirming that some one owes him this duty, since to assert the contrary is to affirm that upon no one rests the duty of calling aid that may save life. If we concede the existence of this general duty, then the further search is for the one who in justice owes the duty, and surely, where the question comes between the employer and a stranger, the just rule must be that it rests upon the former."

Justice Cooley in his opinion in *Marquette and Ontonagon Railroad Company v. Taft*,¹ a case in which the court was equally divided as to the liability of the railroad company for medical services engaged by a yard-master and superintendent, clearly indicates that in his judgment a railroad company owes a duty to its injured employees in the matter of furnishing to them medical aid. "We shall not stop," he says, "to prove that there is a strong moral obligation resting upon any one engaged in a dangerous business, to do what may be immediately necessary to save life or prevent an injury becoming irreparable, when an accident happens to a person in his employ. We shall assume this to be too obvious to require argument." And again, "we doubt the right of the railroad company to show that authority to provide for such cases has been withheld from the superintendent, unless they go farther and show that they have conferred it upon some other officer. We think it their duty to have some officer or agent, at all times, competent to exercise a discretionary authority in such cases, and that on grounds of public policy they should not be suffered to do otherwise." Justice Graves in his opinion in this case, although holding that the general superintendent of a railroad company has not, by virtue of the authority of his office, power to bind the company for medical services rendered to an injured employee, recognizes that a duty to provide for emergencies rests upon the company. "I think," he says, "it is not too much to add that it was the duty of the company to keep lodged where it could be seasonably exerted, a discretionary power for meeting such emergencies, and that in the interests of humanity it ought to be used cheerfully and liberally." But notwithstanding expressions of opinion like the foregoing, the duty imposed upon a railroad company to furnish medical attendance to employees and others injured through the medium of the road, is,

¹ 26 Mich. 289,

undoubtedly, in the absence of statutory requirement or of agreement by an authorized official, moral rather than legal. In cases of this kind, according to the general current of opinion, liability, if it exists, arises from agreement, and not from the relation of the parties, or the nature of the employment, or the exigency of the situation. But while this is so, a reading of the cases will make it apparent that the moral duty to the injured that grows out of the exceptional conditions surrounding the operation of railway trains, has much to do with the implied power of certain officials to bind the company by their engagement of medical services.

The authority to bind the railway company rests primarily in the board of directors; and this board may by formal action authorize the rendering of medical services to injured employees and others, and so make the company liable therefor. But a board of this kind, being in a sense the legislative body of the corporation, ordinarily acts in a general way. It leaves the details of management and business to subordinate officials. It declares the policy of the corporation, and directs how its business shall be done, promulgating general and specific rules for the guidance of its official force. In the ordinary business affairs of the company, it rarely acts directly, but usually it acts through its agents. And so it happens that the question under discussion is generally one of agency. Under what circumstances may a railroad company be made liable for medical services rendered to injured employees and others? What officers have authority to bind the company? And may authority in any case be presumed by virtue of the character of the office, or is it in all cases a matter of proof? These are questions that have given to the courts not a little trouble and in regard to which judicial opinion is by no means harmonious.

In case of railway accidents, it frequently happens that neighboring physicians are called upon by railway officials, and even by subordinate employees, to give such aid to the injured as may be necessary, and the bills for such services are often contested by the railway companies on the ground that the agents contracting for them acted *ultra vires*. The important question in every case of this kind is as to the authority of the agent, either express or implied, to bind the company for such services. A careful consideration of the subject involves a review of the cases in which the authority in this regard of different railway agents has been discussed. But before entering upon this, it may be suggested that even though the agent have ample authority to bind the company

for such services, the physician cannot recover if he fails to show that the services were rendered upon the credit of the company.¹

The railroad president can without doubt bind his company for medical services rendered to injured employees and others. His is the chief office of administration. The office itself constitutes notice to the public of the plenary powers of the incumbent. By virtue of the ordinary rules of agency, one is justified in dealing directly with the president in regard to matters connected with the management and operation of the road without inquiry as to the extent of his powers. His undertakings in behalf of the company within the general field of executive management as indicated by his title, will be binding. His authority to act in cases of emergency arising from accident is inherent in his office. It need not be proved; the court will take judicial cognizance of it. But cases discussing this phase of the question are few. The position of the president is such that he is rarely called upon to engage or authorize the services of physicians in cases of emergency. Ordinarily this is done by superintendents or subordinate officials. But so far as there has been an expression of judicial opinion upon the subject, the authority of the president to bind the company has been recognized. In the cases that have arisen, so far as the writer has observed, the authority has been exercised by way of ratification. Thus, in *Trenor v. The Central Pacific Railroad Co.*,² the services were rendered upon request of an agent of the company, but the company was held to be bound by reason of a subsequent ratification by the president. In *Canney v. The South Pacific Coast Railroad Co.*,³ the question was not directly raised, but the facts of the case were such that the court would naturally have said that the president had no power to bind the company for the medical services rendered, if such had been its opinion. In this case, after the physician had begun his attendance upon the injured parties, the president of the company said to the latter, "that they should employ whatever physician they saw proper," and that the company "would pay the bills." This, however, was not said to the physician, nor was he present when it was said. He learned of the conversation through the patients with whom it was had. This was all that there was in the case upon which to base an agreement by the company. The court held that there was no agreement. The company was not

¹ Northern Central Railway Company v. Prentiss, 11 Md. 119.

² 50 Cal. 222.

³ 63 Cal. 501.

bound because the services were not rendered at the request of its president or any authorized officer or agent. As will presently appear, a railroad company may be bound for medical services rendered to injured employees and others upon an engagement by its general manager or by its superintendent. This being so, it is certainly logical to conclude that a contract by its highest official for like services should also be binding.

The office of general manager is one that carries with it, ordinarily, large powers and great discretionary authority. In some companies the general manager is essentially the president of the road as well as its general business agent. In others his duties are those usually performed by the general superintendent. But in all companies the general manager is recognized as a high official with plenary powers to bind his principal in all matters connected with the running and general operation of the road. His authority to act within the limits indicated by his title will be presumed. The case of *Walker v. The Great Western Railway Company*,¹ is an authority in point. In this case it is held that the general manager has implied authority to bind his company to pay for surgical attendance upon a servant of the company who has been injured by an accident on its lines. "If the general manager," says Kelly, C. B., "has no authority for this purpose, no official of the company has. Must a board be convened before a man who has both his legs broken can have medical assistance?" In *Louisville, Evansville and St. Louis Railway Co. v. McVay*,² it is held that the general manager of the road, by virtue of the powers incident to his office, has authority to bind the company by his ratification of a contract made by a road-master for nursing a person injured on the line of the railway. "Can we presume," says the court, "from the title 'general manager,' that the duties and powers of the general manager were sufficiently comprehensive to include contracts for the nursing of a person wounded upon appellant's road? The term 'general manager' of a corporation, according to the ordinary meaning of the term, indicates one who has the general direction and control of the affairs of the corporation, as distinguished from one who may have the management of some particular branch of the business. . . . We should have to shut our eyes to the most common observation to hold that the courts will not presume

¹ Law Reports, 2 Exch. 227, 36 Law Journal Reports, New Series, 123.

² 98 Ind. 391.

that the 'general manager' of a railway has authority to bind the corporation by contracts for medical and other services to an injured employee, passenger, or other person wounded on the road by an agency of the company. Different 'section' bosses or road-masters may have different duties imposed upon them, and be clothed with different powers, by different corporations. The same, probably, may be said of superintendents. Possibly the same may be said of 'general managers,' but this term indicates a general control and direction of all matters connected with the operation of the road, and until the contrary is shown, the presumption ought to be indulged by the courts that such an officer has authority to care for the wounded persons above mentioned." In *Atlantic and Pacific Railroad Co. v. Reisner*,¹ it is held that, "general manager and general agent are synonymous terms," and that the general agent of a railroad company, although acting also as station agent, has, by virtue of his general agency, authority to bind the company by a contract with a hotel-keeper to furnish to a brakeman injured in the service of the company, board and attendance, while recovering from his injuries. "The general agent of the company," says the court, "is virtually the corporation itself. . . . The defendant in error was not compelled to institute inquiry as to the moral or legal liability of the railroad company to take care of the disabled employee before receiving him into his hotel, after the general agent of the company had agreed that the company would pay for the board and service."²

As to the implied power of the president and the general manager to bind the company, under the circumstances suggested, there seems to be no conflict of authority; but in regard to the power of the superintendent, whether he be general superintendent or division superintendent, the courts are by no means in harmony. It was held in *Stephenson v. New York and Harlem Railroad Co.*³ that a railroad superintendent had not, by virtue of his office and without a special delegation of power, the authority to bind his company by his settlement of claims made against the company for the negligence of its servants in running its trains or to contract with third

¹ 18 Kan. 458.

² In the trial of this case in the court below, the defendant company was not represented by attorney. In reading the case as reported, one cannot resist the impression that, had the facts been fully developed, a general agency would not have been shown. The conclusion of the appellate court was probably justified by the facts as disclosed in the record, although as to this there might be a difference of opinion.

³ 2 Duer, 341.

persons to repair or remedy the consequences of such negligence, and that, therefore, a superintendent could not bind his company by the employment of a physician or surgeon to attend upon a child, injured by the cars of the company. The argument of the court was that from the title of the office such authority could not be implied, as it was not necessarily an incident, and that the conclusion that the superintendent possessed such authority could not be drawn from his testimony as to his powers, the only evidence in the case upon the subject. He testified that he had a general supervisory control over the whole line of road; that everything connected with the running of the road was under his supervision; that he paid money to drivers, conductors, and other persons employed by him as superintendent for the company; but that he had no direction over the treasury. This case, although decided by a court of inferior jurisdiction, is frequently cited, but it has been severely criticised. "This decision," says Justice Cooley in *Marquette & Ontonagon Railroad Company v. Taft*,¹ "so far as we know, stands alone, and we hazard nothing in saying that it is opposed to the general, if not universal, practice of railroad companies in similar cases." But the principle of the decision is followed by Justice Graves in his opinion in the same case, although the decision itself is not cited by him.

The case of *Marquette & Ontonagon Railroad Company v. Taft*,² as before suggested, was decided by a divided court, which, under the statute, was an affirmance of the judgment below. The case is an important one because of the character of the opinions rendered therein, particularly that of Justice Cooley. It was an action brought by a surgeon for services rendered to an injured employee. The surgeon was called by the yard-master of the company, and his employment was sanctioned by the superintendent. The company contested the bill for medical services upon the ground that the parties employing the surgeon were not authorized to bind the company for such services. The court was unanimously of the opinion that a railroad yard-master has, by virtue of his office, no power to do this, but the justices were equally divided upon the question of the power of the superintendent in this regard. There was no evidence of express delegation of power to the superintendent or of any usage in the company from which it might be implied that he had authority to contract for medical attendance upon injured parties. There was nothing in the case but the name to indicate the nature and extent

¹ 28 Mich. 289.

² 28 Mich. 289, 300, 301.

of the superintendent's agency. "Upon this isolated fact," said Justice Graves, "can we lay it down as law that Mr. Merritt (the superintendent) must be taken to have had not merely the ordinary power of control and management pertaining to superintendency, but the larger and more imperial power to bind the treasury of the company to bestow what in law would have to be considered as something originally resting on imperfect obligation? As we have nothing to indicate the nature and scope of Mr. Merritt's agency in this company, except the name it bore, we are not in a situation to make the inference unless on appealing to general usage, the name is found to denote the authority." Such an appeal, the Justice argued, must show, what is well known, "that the superior powers of control and management, and especially such of them as bear upon extraordinary outlays and liabilities, are variously arranged, distributed and classified"; that "the interior corporate arrangements and regulations of railroad companies follow no model, and differ greatly in different companies"; that "there is no uniformity of plan, as between different companies as to the precise amount of power indicated by the names of agencies"; that "some powers, from their nature, may be reasonably looked for in one department, or as connected with one position, and others may be expected to belong elsewhere," but that "there are many special and peculiar powers, of which that in question is one, which do not regularly or naturally place themselves under pre-recognized titular heads," and that "are subject to distribution among the superior agencies of each company, according to its views of policy"; that "the name chosen by one company to cover such powers, cannot be safely predicted from a knowledge of the regulations on that subject in another company." And the Justice concluded that although it may be admitted that some superintendents have the power claimed for the superintendent in the case under examination, it cannot be inferred from that fact that the power is incident to the office. "The class of powers to which this belongs," said the Justice, "has been arranged capriciously, and the name superintendent has not uniformly been employed as an exponent of such power." Justice Campbell concurred with Justice Graves in this opinion, but the opposite view was taken by Justice Cooley, with whom Chief Justice Christiancy concurred.¹

¹ See, also, *Brown v. Missouri, Kansas & Texas Railway Co.* 67 Mo, 122.

In *Union Pacific Railway Company v. Beatty*,¹ it is held that a division superintendent has not, by virtue of his office and without special power in that regard conferred upon him, authority to bind his company for medical services rendered to passengers injured by unavoidable accident; that a charge to the jury that such superintendent will be presumed to have such authority until the contrary appears, is error. It is suggested, however, that the charge would be correct if the alleged employment had been for the treatment of an employee ;² that a division superintendent "will be presumed, in the absence of anything to the contrary, to have authority to employ a physician and surgeon to attend an employee who has been injured while in the service of the company," and this for the reason that the company is "interested in the speedy cure of employees who have been disabled, and in their early resumption of duties for which they have been specially trained." But in regard to passengers who have been unavoidably injured, it is argued that the company is not only under no legal liability for damages, but that it has no such concern for their health and soundness as it has in the case of employees who have been injured while in its service. "To furnish medical care and treatment for passengers in such cases," says the court, "would be a mere gratuity, and the funds of the corporation cannot be thus dispensed by the division superintendent without authority from the board of directors." The distinction made in this opinion is certainly subject to criticism. In the case of an injured employee, the liability of the company to pay for medical services engaged by the superintendent, is not based upon its liability to the employee for damages, but rather upon the agreement made by the superintendent, and it would seem that a like liability should attach if the agreement is made by the superintendent in regard to the surgical treatment of injured passengers, even though there be no legal liability on the part of the company to the passengers. The obligation of the company to its passengers is certainly quite as great as its obligation to its employees, and if there is a consideration for the agreement of the superintendent for medical attendance where employees are injured in service without the fault of the company, there certainly ought to be a consideration for the agreement where passengers are injured without its fault. If the authority of the superintendent to engage medical services can be presumed in the case of the injured employ-

¹ 35 Kan. 265.

² See *Pacific Railroad Company v. Thomas*, 19 Kan. 256; *Atlantic & Pacific Railroad Co. v. Reisner*, 18 Kan. 458; *Union Pacific Railway Company v. Winterbotham*, 52 Kan. 433.

ees, it is difficult to see why a like presumption should not arise where the parties injured are passengers.

In *Hodges v. Detroit Electric Light & Power Co.*,¹ which was an action for services rendered as nurse to an injured employee of a manufacturing company, it was held that the question of whether the superintendent who engaged the services had authority to bind the corporation by his contract, was properly left to the jury, although this conclusion would seem to be inconsistent with the court's expressed approval of the reasoning of Justice Cooley in *Marquette & Ontonagon Railroad Company v. Taft*² and with the quotation from Justice Cooley's opinion in that case, which the court adopts as a part of its opinion, and which states in effect that it is within the general scope of the employment of a railway superintendent to make a contract for the treatment of an injured employee and that no evidence to prove a special authorization is necessary. It is possible, although this is not disclosed in the opinion, that the court's conclusion in this case was influenced by the fact that the case had to do with a manufacturing rather than with a railroad corporation. As will be shown presently, there is authority for a distinction.³

Turning now to the other side of the question, we find a substantial basis, both in reason and authority, for the proposition that the power of the railroad superintendent to bind his company for medical attendance upon employees and others, injured by accident upon the road, may be presumed from the nature of the office and the duties that the incumbent must ordinarily perform, and that a special authorization need not be shown. The reasoning that sustains this view is admirably given by Justice Cooley in *Marquette & Ontonagon Railroad Company v. Taft*.⁴ He says:—

"The argument for the railway company assumes that no agent or employee of the company can have authority to call in a surgeon to attend upon a person in their employ who has the misfortune to be injured in their service, unless specially empowered by the directors to make contracts of that peculiar nature. On the other hand, the plaintiff in the suit below contends that the general superintendent must be assumed, by virtue of his office, to have the requisite authority for this purpose; and upon that assumption the case seems to have been fairly submitted to the jury. . . . It is a rule of law, settled on grounds of public policy as much as on contract,

¹ 109 Mich. 547.

² 28 Mich. 289.

³ See *Holmes v. McAllister*, 123 Mich. 493; *Godshaw v. Stuck & Brother*, (Ky.), 51 L. R. A. 668; *Spelman v. Gold Coin Mining and Milling Co* 26 Mont. 76, 55 L. R. A. 640.

⁴ 28 Mich. 289.

that one who enters the service of another, takes upon himself all the usual risks incident to the employment, and consequently that the servants of a railroad company cannot recover damages of the company for injuries received in their service in consequence of negligent conduct of another servant, as a passenger upon the company's road or any third person might do. If, therefore, anything is paid by the company to the injured servant in such cases, it is by way of gratuity and not by way of compensation.

The business of such a company is managed by a board of directors, which will meet annually, and as much oftener as the necessities of the corporation may seem to require, but it is not expected to be constantly, or even very often in session. It is the legislative body of the corporation, and will lay down general rules for the management of its business, and appoint executive officers to give them effect. It is reasonable to presume that the rules established by this board will be those supposed to be necessary to advance and protect the interests of the company, and that its members will not be solicitous to establish those which will impose burdens upon the company, even though a duty might rest upon the company to bear such burdens. And even if we were to assume that the directors would be willing and desirous to provide for the discharge of all the moral obligations fairly resting upon the company, and that providing medical or surgical aid to an injured employee was one of these, it is doubtful if the subject would be deemed of sufficient importance to the interests of the company to occupy the attention of the board, which, from the nature of the case, can be expected only to meet at considerable intervals, and to discuss and settle general principles and the most important matters, leaving details to executive officers and subordinates.

"The result very likely is, if the position taken by the railway company in this case is sustained, that if a laborer for any one of the railway corporations in this state, in any of their yards or machine shops, or on any of their trains or tracks, is run over or injured by one of their trains, or by any of their dangerous machinery, in consequence of the neglect or default of some other servant or agent of the company, there is not only no legal obligation resting upon the company to provide him the necessary medical or surgical care and assistance, but there is not, unless the board of directors should happen to be in session, even the necessary power for the purpose in the hands of any officer of the company, and the injured person may be left where he has fallen, or been stricken down, to suffer and perhaps to die of neglect, though the officers of the company might be willing and disposed to recognize and discharge any moral obligation resting upon the company to aid him, if it were within the scope of their agency to do so.

"There can be no doubt that it is within the scope of somebody's employment for a railway company to cause a beast which is injured in carriage, or run over at a crossing, to be picked up and have the attention proper and suitable to its case; and if no one is authorized to do so much for the faithful servant of the company who is in like manner injured, but all persons in its service are impliedly forbidden to incur on its behalf any expense beyond what may be necessary to remove him out of the way of their trains or machinery—even to convey him to his house, or to save his life by binding up a threatening wound—then, if such is the law, the courts must not hesitate

to apply it, even though it be impossible to avoid feeling that it ought not to be the law, and that no business of this extensive and hazardous nature ought to be suffered to be carried on with no one for the major part of the time empowered to recognize and perform a duty which, at least on moral grounds, is so obvious and imperative. But we do not think such is the law. On the contrary, we think it is within the general scope of the employment of a railway superintendent to make such a contract as the jury have found was made in this case, and that no evidence to prove a special authorization is requisite. The nature of the powers of a railway superintendent is indicated by the title of his office. He has the general superintendence of the business of the corporation, and is the immediate representative of the corporation in all business transactions with the public. This is the general fact, although there are undoubtedly cases where these general powers are, in part at least, conferred upon the president, or some other officer.

"There is no evidence that this case was exceptional, and we must consequently assume that this superintendent had the usual powers of general supervision. In all that pertains to the general management and operation of the road he speaks and acts for the company, and he must decide for it, and may make contracts on its behalf in the emergencies which unexpectedly arise, connected with, or growing out of the running of their trains, the transportation of persons or property, and the management and control of servants.

"Nor do we understand what rule there can be, either of law or reason, to preclude the courts taking judicial notice of the powers of a superintendent of a railroad. In fact the courts do often take judicial notice of the powers even of inferior officers. No one, for instance, would think it necessary to make proof that a freight agent may enter into a contract for the carriage of cattle, though the name of his agency no more points out the scope of his duties than does that of the superintendent indicate his general supervision. And if we were to require proof of all such matters when called upon to decide the various questions touching the powers, duties and modes of business of railway companies, we should find ourselves utterly powerless in the great majority of railway cases which come before us, to deal intelligently with the questions raised. But in fact we do habitually take notice of these things, as the whole community does in dealing with these corporations; and a refusal to do so would be not only a refusal to do what we do constantly in other cases, but it would often amount to a denial of justice."

The reasoning of Justice Cooley in this case is sustained by abundant authority. For example, in *Toledo, Wabash & Western Railway Company v. Rodrigues*¹, it is held that it is within the power of a general superintendent of a railroad to bind the company by his recognition of a contract involving expenditure on account of injuries received by the company's employees while in service; that express proof of authority is not necessary. When it appears, says the court, that the general superintendent "manages all the busi-

¹ 47 Ill. 188, 95 Am. Dec. 484.

ness of the road within his department, and binds the company by contracts in its behalf in regard to its general business, it may safely be inferred" that his consent to a contract for nursing and care of an injured employee was within the scope of his authority. Substantially similar to the foregoing is the case of *Toledo, Wabash & Western Railway v. Prince*¹, although the ratification of the contract of service by the superintendent upon which the decision of the court is based is implied and not express as in the last case. In *Cincinnati, Indianapolis, St. Louis and Chicago Railway Co. v. Davis*², the professional services were rendered at the request of a conductor on the authority of a telegram from the general superintendent. The railroad company offered to prove that it "had in its employment a chief physician and surgeon, whose duty it was to employ surgeons to give professional attention to persons injured by its trains." This was excluded. The court held that this was not error, and said: "It was immaterial whether the appellant had, or had not a chief surgeon in its service charged with the duty of employing subordinate surgeons, for there is no pretence that the appellee had notice of that fact. He was not bound to look beyond the general superintendent as the source of authority warranting his employment. It is quite well settled that a general superintendent has authority to employ surgeons to give attention to persons injured by the trains of the company he represents." A rule that would impose upon the surgeon the duty of making specific inquiry as to the scope of the superintendent's authority would, the court said, "operate harshly in many cases, for, if the surgeon must stop to make inquiries before leaving his home or office, the injured man might perish. . . . It is the company that selects the superintendent, places him in a position of power and invests him with ostensible authority, and if he betrays his trust, the principal, by whom he was put in a position of that character, should bear the loss, and not the surgeon who in good faith acts upon the appearances created by the company." The cases to which reference is made in the note are of like import.³

As is apparent from an examination of the cases upon the subject, the authority of the superintendent to bind the railroad com-

¹ 50 Ill. 26.

² 126 Ind. 99, 44 Am. & Eng. R. R. Cases, 459.

³ *Southern Railway Company v. Brister*, 79 Miss. 761, 31 So. Rep. 441; *Cairo & St. Louis Railroad Co. v. Mahoney*, 82 Ill. 73; *Indianapolis & St. Louis Railroad Co. v. Morris*, 67 Ill. 295; *Pacific Railroad Co. v. Thomas*, 19 Kan. 256; *Atchison & Nebraska Railroad Company v. Reeher*, 24 Kan. 228; *Union Pacific Railway Co. v. Winterbotham*, 52 Kan. 433; *Terre Haute and Indianapolis Railroad Co. v. Stockwell*, 118 Ind. 98.

pany for medical services, is frequently exercised by way of ratification of an agreement made by a subordinate employee. And the attitude of the courts in regard to the exercise of this authority, as well as upon the general question under discussion, is seen in their readiness to sustain a ratification by superintendents upon slight evidence. For example, in the case of *Toledo, Wabash & Western Railway Co. v. Prince*,¹ the surgeon was engaged by a station agent to take charge of a man wounded in the service of the company. The facts of the accident, including presumably a statement of the employment of the surgeon, were reported by the station agent to the general superintendent of the road a few days after the accident. No complaint in regard to the action of the station agent came from the superintendent until after the bills for medical services were presented. "If the superintendent," said the court, "desired to save the company from being held responsible, he should on receiving the report of the case, have dissented from the action of the station agent and directed him to apprise the surgeon of such dissent, instead of allowing the latter to continue his services under the belief that he was in the employment of the company." The court held that a verdict finding a ratification by the superintendent of the station agent's contract was not against the evidence, and suggested that "a jury will generally find, even upon somewhat slight evidence," that the act of a subordinate "in employing the surgical skill necessary to save human life was ratified by his superiors." In *Terre Haute and Indianapolis Railroad Company v. Stockwell*² a conductor employed a physician to take charge of a stranger who had been severely injured by collision with the train, and directed him to send his bills for services to the superintendent of the road. Telegrams were at once sent by the conductor both to the superintendent and the general agent of the company, informing them of the injury to the man and that he had been left in charge of the physician. The company did not repudiate the action of the conductor. It was held that permitting the physician to continue his services, under the circumstances stated, was a ratification of the conductor's act, and that the company was liable. "If the company," said the court, "having been informed of the accident, the employment of the appellee by its conductor, claiming to act as its agent, and that the appellee was acting under the employment, did not intend to hold itself responsible for the services rendered, it

¹ 50 Ill. 26.

² 118 Ind. 98.

became and was its duty to so notify the appellee, and its failure to do so was a ratification of the employment as made by the conductor." The facts which the court in *Pacific Railroad Co. v. Thomas*¹ held to be sufficient to justify a finding by the jury that there had been a ratification by a division superintendent of a contract for medical services made by a subordinate employee, were substantially as follows: The physician was engaged by a division master mechanic to render services to an employee injured while in the performance of his duties. While treating the employee, the physician sent a bill for services rendered to the division superintendent, and enclosed with the same a letter in which he stated his employment by the master mechanic, and asked that the company pay the bill. No attention was paid to the bill or the letter. "The only evidence," said the court, "tending to show a ratification of said employment was the neglect or refusal of Hale (the division superintendent) and of the railroad company, after receiving said letter and bill, to pay any attention to them. And upon this evidence the jury evidently found that there was a ratification; and taking this evidence, together with the circumstances of this case, we think the evidence was sufficient to sustain such finding." *Indianapolis and St. Louis Railroad Co. v. Morris*,² and *Cairo and St. Louis Railroad Co. v. Mahoney*³ discuss the question of ratification, and are in line with the foregoing. In the latter case it is suggested that "slight acts of ratification by the company will, ordinarily, satisfy a jury that the employment was the act of the company."

It is very generally held that subordinate employees, such, for example, as station agents, conductors, locomotive engineers, road-masters and yard-masters, cannot bind the company by their contracts for medical attendance upon persons injured on the road.⁴

¹ 19 Kan. 256.

² 67 Ill. 295.

³ 82 Ill. 73.

⁴ See *Cox v. Midland, etc. R. Co.*, 3 Exch. 268; *St. Louis & K. C. R. R. Co. v. Olive*, 40 Ill. App. 82; *Peninsular Railroad Co. v. Gary*, 22 Fla. 356; *Marquette & Ontonagon Railroad Co. v. Taft*, 28 Mich. 289; *Atlantic & Pacific Railroad Co. v. Reisner*, 18 Kan. 458; *Tucker v. St. Louis, Kansas City and Northern Railway Co.*, 54 Mo. 177; *Sevier v. Birmingham, Sheffield & Tenn. River R. R. Co.*, 92 Ala. 258; *St. Louis, Ark. & Texas Railway Co. v. Hoover*, 53 Ark. 377; *Louisville, Evansville & St. Louis Railway Co. v. McVay*, 98 Ind. 39; *Cooper v. N. Y. C. & H. R. Railroad Co.*, 13 N. Y. Sup. Ct. R. 276. In *Hanscom v. Minneapolis Street R. Co.*, 53 Minn. 119, 20 L. R. A. 695, it is held that an "inspector" whose general duties are to supervise the conduct of other employees may bind the company for medical services when it appears that he has been instructed to see, in case of accident, that those injured are taken somewhere where medical aid can be given.

Yet, as has been shown, their agreements in this regard may become binding through the ratification of higher officials. And in two or three states, notably in Indiana, the doctrine has been pronounced that in case of emergency, an inferior official, a conductor for example, may, for the time being and for certain purposes, be clothed with the authority of a superior officer, and may, therefore, within the limits prescribed by the necessity for immediate action, bind the company by his agreement for medical services to employees injured through the agency of the road. If an accident happens at a distance from the general offices of the company and under circumstances where communication therewith cannot be had within the time demanded by the exigency of the situation, then, by this doctrine, the conductor, if the highest official present, may bind the company by such action as is immediately necessary to save life and alleviate suffering. The argument upon which this doctrine rests, is drawn from the exigency of the situation and the duty arising therefrom, a duty imposed by the plainest principles of humanity. An accident has occurred resulting in injury to an employee of such a nature that immediate medical attendance is imperatively required. It must be given before superior officers can be consulted and directions obtained. A duty rests upon some one to do what can be done to relieve the injured person. While the company is under no legal obligation to furnish medical aid, yet, as is said in one of the cases, where an employee has "been rendered helpless when laboring to advance the prosperity and the success of the company, honesty and fair dealing would seem to demand that it should furnish medical assistance."¹ And, as is said in another case, "if it be conceded that honesty and fair dealing require that medical assistance should be furnished, then the law requires it, for the law always demands honesty and fair dealing. It would be a cruel reproach to the law, and one not merited, to declare that it denied to an injured man what honesty and fair dealing require."² The corporation can act only through its agents, and when the exigency of the situation is such that "honesty and fair dealing" require that it should act and act at once, then the highest agent present is, by virtue of the situation and the duty imposed, clothed with such power as may be necessary for meeting the emergency. Under such circumstances, an inferior official may become, for the time being and within the limits prescribed by the necessity, so far as the exer-

¹ *Cairo, etc. R. R. Co. v. Mahoney*, 82 Ill. 730.

² *Terre Haute & Indianapolis Railroad Co. v. McMurray*, 98 Ind. 358, 364, 365, 367.

cise of authority is concerned, the corporation itself. "If then," says the court in *Terre Haute & Indianapolis Railroad Co. v. McMurray*,¹ "the conductor is the highest agent on the ground, and the corporation must and does act, his act is just as much that of the corporation in the particular instance, and circumscribed by the exigencies of the special occasion, as though he were much higher in authority. . . . Can a man be permitted to die while waiting for the company to determine when and how it shall do what humanity and strict justice require? Must there not be some representative of the company present in cases of dire necessity to act for it? The position of counsel . . . falls far short of meeting cases where there is no time for deliberation, and where humanity and justice demand instant action. From whatever point of view we look at the subject, we shall find that the highest principles of justice demand that a subordinate agent may, in the company's behalf, call surgical aid, when the emergencies of the occasion demand it, and when he is the sole agent of the company in whose power it is to summon assistance to the injured and suffering servant. Humanity and justice are, for the most part, inseparable, for all law is for the ultimate benefit of man. The highest purpose the law can accomplish is the good of society and its members and it is seldom, indeed, that the law refuses what humanity suggests. Before this broad principle bare pecuniary considerations become as things of little weight. There may be cases in which a denial of the right of the conductor to summon medical assistance to one of his trainmen would result in suffering and death; while, on the other hand, the assertion of the right can, at most, never do more than entail upon the corporation pecuniary loss. It may not even do that, for prompt medical assistance may, in many cases, lessen the loss to the company by preventing loss of life and limb." The foregoing is, in substance, the argument for this doctrine, and certainly it is not without force. The principal cases in which the doctrine has been recognized and applied are given in the note.²

If this argument is sound when applied to the case of an injured

¹ 98 Ind. 358.

² *Terre Haute & Indianapolis Railroad Co. v. McMurray*, 98 Ind. 358; *Louisville, New Albany & Chicago Railway Co. v. Smith*, 121 Ind. 353; *Terre Haute & Indianapolis Railroad Co. v. Brown*, 107 Ind. 336; *Evansville & Richmond Railroad Co. v. Freeland*, 4 Ind. App. 207; *Bedford Belt Railway Co. v. McDonald*, 12 Ind. App. 620; *Toledo, St. Louis & Kansas City Railroad Co. v. Mylott*, 6 Ind. App. 438; *St. Louis, Arkansas & Texas Railway Co. v. Hoover*, 53 Ark. 377; *Arkansas Southern Railroad Co. v. Loughridge*, 65 Ark. 300; *Chicago & Alton R. R. Co. v. Davis*, 94 Ill. App. 54.

employee, it would seem that it should be so regarded when applied to the case of an injured passenger, where the circumstances attending the injury are similar. The liability of the company under the facts suggested rests upon agreement. If the agent has authority to make the agreement in one case, by virtue of the exigency of the situation and the duty thereby imposed, it is reasonable to conclude that he has authority to make it in the other. The exigency being the same in each case and the injury in each demanding immediate attention, the duty imposed in each would seem to be equally imperative. If services rendered by the physician called can form the consideration for the agreement in the case of the injured employee, like services rendered to the passenger, who has been injured through the agency of the road, should in reason form a consideration for the agreement in his case. But so far as the writer has observed, this doctrine has not been directly considered and applied in a court of last resort where the services were rendered to an injured passenger. In *Terre Haute and Indianapolis Railroad Company v. Stockwell*,¹ the railroad company was held to be bound by the agreement of a conductor for medical services in aid of a stranger injured by collision with the train, the necessities of the case requiring immediate action by some one, but in this case the decision of the court was based upon a ratification of the agreement by the company.

There is a limitation upon the doctrine that an inferior officer may under certain circumstances bind the company for medical services, that should not be overlooked. His authority arises from the emergency, and it terminates with the emergency. His authority is special, not general, and does "not extend beyond the duty created by the emergency."² Accordingly, it was held in *Louisville, New Albany & Chicago Railway Co. v. Smith*² that while, by virtue of the exigency of the situation, a conductor had authority to employ a competent surgeon to render professional services to a brakeman severely injured in the company's service, he had no authority to bind the company by the employment of additional surgeons to aid in the treatment of the case after the initial service, which was immediately necessary, had been rendered. The conductor, said the court, "had authority to do what the emergency demanded, in order to preserve his injured fellow-employee from serious harm, but he had no authority to do more. When the company had procured the services of a competent surgeon, it had done all that it

¹ 118 Ind. 98.

² 121 Ind. 353.

was morally or legally bound to do, and the conductor could not impose upon it any greater obligation."¹

While the corporation may be bound by the agreement of its agents to pay for medical attendance upon injured employees and others, where the authority of the agents, either express or implied, is sufficient to cover the case, it cannot be charged with the negligence of a surgeon so employed, if due precaution has been exercised in the selection. "The law is well settled," says the court, in *Atchison, Topeka & Santa Fe Railroad Co. v. Zeiler*,² "that a railroad company having used reasonable care in his selection, is not chargeable with the want of skill in a physician or surgeon whom it calls for a passenger or injured employee." The supreme court of Indiana in considering this matter in *Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co. v. Sullivan*,³ says that when the duty of furnishing medical aid to employees injured in the service of the road has been assumed by the company, it will be "liable only, if at all, for its negligence in the employment, in the first instance, of an incompetent person, and not for his negligence or tortious acts in the treatment of its servants" who have accepted his professional services. The foregoing is undoubtedly the law when the medical services are in the nature of a gratuity to the employee; but if it should appear that "the company was conducting a hospital with its own physician for the purpose of deriving profit therefrom, or if it contracted with" the employee "to furnish him with the services of a competent physician, and to properly treat him in case of an injury, it would be liable for the negligence or want of skill of its physician in attending him."⁴

As bearing upon the general subject under discussion, it is of interest to inquire concerning the attitude of the courts upon the question of the liability of other than railroad companies—of mining or manufacturing companies, for example, for medical services

¹ See also *Terre Haute and Indianapolis Railroad Co. v. Brown*, 107 Ind. 336; *Terre Haute and Indianapolis Railroad Company v. McMurray*, 98 Ind. 358; *Evansville & Richmond Railroad Co. v. Freeland*, 4 Ind. App. 207; *Ohio and Mississippi Railway Co. v. Early*, 141 Ind. 73, 28 L. R. A. 546.

² 54 Kan. 340, 350. See also, *Lambheim v. DeKoninglyke Re Nederlandsche Stoomboot Maatschappij*, 107 N. Y. 228; *O'Brien v. Cunard Steamship Co.*, 154 Mass. 272; *Eighty v. Union Pacific Railroad Company*, 93 Iowa 538, 27 L. R. A. 296; *South Florida Railroad Co. v. Price*, 32 Fla. 461.

³ 141 Ind. 83, 90, 27 L. R. A. 840. Numerous authorities are collected in this case.

⁴ See *Richardson v. Carbon Hill Coal Co.* 6 Wash. 52, 20 L. R. A. 338; *Union Pacific Railroad Co. v. Artist*, 19 U. S. Appeals (8th Circuit) 612, 60 Fed. Rep. 365, 23 L. R. A. 581.

rendered upon the request of their agents. Has the general manager or the superintendent of a mining or manufacturing company the implied authority to bind his company for such services, as has the general manager or the superintendent of a railroad company? And can the exceptional doctrine as to the implied authority of the inferior railroad official, pending an emergency, be applied in the case of the inferior official of a mining or manufacturing corporation under like circumstances?

By way of answer, it may be suggested that if the general question were purely and simply one of ordinary agency, if it were entirely unaffected by surrounding circumstances and conditions, it would be difficult to differentiate between railroad cases and those arising out of the engagement of medical services by the agents of other corporations. If the superintendent of a railroad, for example, had, by virtue of the power incident to the office and without regard to the special hazards that attach to the operating of trains, authority to bind the company for medical attendance rendered to employees and others injured through the agency of the road, then it would seem to follow that the superintendent of a mining company should have like authority under similar circumstances. In other words, if the authority could be held to spring from the office and from that alone, it would be logical to conclude that it should exist in the latter case as well as in the former, the ordinary functions of the office being substantially the same in each case. And in *Mt. Wilson Gold and Silver Mining Co. v. Burbidge*,¹ it was held that the general superintendent of a mining company, who was in full charge of its affairs and property, should be presumed to have authority to bind the company for the nursing and care of an employee injured in the service of the company. Several railway cases and particularly *Marquette and Ontonagon Railroad Company v. Taft*² and *Toledo, Wabash and Western Railway Company v. Rodrigues*³ were cited in support of the holding. But this case must be regarded as exceptional. Although the courts frequently speak of the general question as one of agency pure and simple, yet it is apparent from a reading of the decisions that the exigencies of the situation in railroad cases influence conclusions, the authority of an officer to bind the company for medical services when presumed, arising, to some extent, from circumstances and conditions out of the ordinary and peculiar to the operating of railroads. It is

¹ 11 Col. Court of Appeals, 487, 53 Pac. Rep. 826.

² 28 Mich. 289.

³ 47 Ill. 188.

very generally held that this doctrine of implied agency that has been developed through the railroad cases, is peculiar to those cases, and does not apply to similar situations in connection with mining or manufacturing companies. A reason for the distinction that is frequently quoted was stated by the appellate court of Indiana in *Chaplin, etc., v. Freeland*,¹ a case in which there was an attempt to fasten liability upon a manufacturer for medical services rendered to an injured employee upon the engagement of a general manager who had no direct authority to bind his principal for such services. "Railroad companies," said the court, "occupy a peculiar position with reference to such matters, exercising *quasi* public functions, clothed with extraordinary privileges, carrying their employees necessarily to places remote from their homes, subjecting them to unusual hazards and dangers, [and] the law has, by reason of the dictates of humanity and the necessities of the occasion, imposed upon such companies the duty of providing for the immediate and absolutely essential needs of injured employees, when there is a pressing emergency calling for their immediate action. In such cases, even subordinate officers are, sometimes, for the time being, clothed with the powers of the corporation itself for the purposes of the immediate emergency, and no longer. . . . We are not prepared, therefore, to hold as a matter of law that the employment of a physician or surgeon for injured employees comes, ordinarily, within the scope of the duties of a general manager of an ordinary manufacturing business. Usually an injured employee procures and pays for his own attendance, and then, if his employer be in the wrong, recovers this sum from his employer with his other damages. Whether or not such an extreme case might arise as would justify or require the court to impose on individual employers a duty analogous to that imposed on railroad companies, it is unnecessary for us to determine." In *Spelman v. Gold Coin Mining & Milling Company*² the agreement for surgical aid to employees injured in the service was made by the general manager of a mining company. The court held that by virtue of his office he had no implied authority to bind the company by such an agreement. "Unless the limits of his authority," said the court, "are shown to have been enlarged, the duties of the general manager are confined to the transaction of the business of the corporation as distinguished from its mere ethical duties and consequent imperfect obligations or supposed charities. The fact that a certain person

¹ 7 Ind. App. 676.

² 26 Mont. 76, 55 L. R. A. 640.

is general manager of a mining company does not, in and of itself, imply authority in him to bind the company in matters other than those of business affairs. It may not be said, as matter of law, or declared as a fact judicially known, that general managers of mining corporations are usually clothed with such authority as that assumed" by the manager in this case. After citing numerous railroad cases in which the doctrine of implied authority had been sustained, the court said: "Whatever may be the rule touching the presumptions with respect to the powers of railroad officials, in our opinion a presumption that the general manager of a mining corporation has been clothed with the delegated power to exercise the authority which" the general manager in this case "assumed to exercise, cannot be indulged. In some of the cases cited, the judges seem to have been unconsciously influenced more by consideration of humanity or moral obligations and of hardship than by the law of agency." An attempt was made in *Godshaw v. J. N. Struck & Brother*¹ to fasten liability upon a private corporation, engaged in the business of building, for medical services rendered upon the engagement of the company's foreman. In denying the liability, the court said:—

"We are not" "prepared to hold as a matter of law that the engagement of physicians or surgeons for injured employees comes within the scope of the duties of a general manager of an ordinary manufacturing business. It seems to us that the rule that appellant seeks to have applied in this case is confined exclusively to railroad companies, and, generally in cases which involve some act of negligence on the part of the company which occasioned the injury."²

The basis of the distinction between railroad companies and mining or manufacturing companies in regard to liability for medical services engaged by company officers is found, then, according to the decisions, in the fact that great hazard characterizes the operation of railroads. It might be suggested that the dangers to which employees are exposed in mining operations and in some kinds of manufacturing are equally as great as those to which the railway employees are subjected, calling for just as prompt action in order that life may be saved and suffering alleviated, and that if the moral obligation is controlling in one case, it ought to be in

¹ 108 Ky.—, 51 L. R. A. 668.

² See, also, *Holmes v. McAllister*, 123 Mich. 493, 48 L. R. A. 396; *Swazey v. The Union Manufacturing Co.*, 42 Conn. 556; *Chase v. Swift & Co.*, 60 Neb. 696; *Meisenback v. The Southern Cooperage Co.*, 45 Mo. 232; *New Pittsburgh Coal and Coke Co. v. Shaley*, 25 Ind. App. 282; *Fraser v. San Francisco Bridge Co.*, 103 Cal. 79, 36 Pac. Rep. 1037.

the other cases. An extension of the doctrine of implied authority to bind the principal beyond its present limits would involve a decision in each case as to the extent and nature of the hazard, an inquiry that the courts thus far have not generally been disposed to undertake. Although sometimes saying that a case of special hazard might arise that would justify the application of the doctrine of presumed authority, they usually declare that the doctrine is confined to railroad cases. The situation serves to illustrate the difficulties that often confront courts when ethical considerations have been made the basis of a departure from settled doctrine or of an extension of legal principles. An appeal to such considerations may be proper and just, as it seems to the writer to have been in the railroad cases to which reference has been made, but the consistent application of the resulting doctrine to new conditions that are bound to arise, must always be a task of no little difficulty and one requiring great discrimination and wisdom.

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